To Whom It May Concern:

This correspondence is in response to your notification of action pursuant to Section 13301 of the California Water Code. As I am a recipient of a notification for a hearing concerning a Cease and Desist Order issued to the residents and property owners of the Los Osos / Baywood Park Prohibition Zone I am forwarding this response under the condition that providing this information is not an admission of guilt or complicity in the violations proposed by your office. I am also aware that your office's notification is not a determination and is only part of the process of notice of hearing.

I also realize that your office is a prosecution team and I reserve my right against self incrimination and that I have the right to question the witnesses brought against me and to review all evidence used in the prosecution of this case. I also reserve the right to have persons who have evidence and / or have been instrumental in providing evidence in this hearing to be subpoenaed by the R.W.Q.C.B.

I also understand by this notification of a hearing that time will be limited as to my defense. As this may limit my ability to present my case I am through this letter notifying your office my objection to this limitation and that in my need to review the extreme volume and technical aspects of this evidence as well as the ability to utilize the subpoena power of the R.W.Q.C.B. I contend that this time constraint is unreasonable.

The following pages are a response to your assertion that this is an 'administrative action' as well as other aspects of this action and your actions are not bound by the Codes as stated under C.E.Q.A. Government Codes and Public Resource Codes and that your office is 'exempt' from presenting the necessary documentation of an Environmental Impact Report or a Negative Impact Declaration with all accompanying scientific and permitting documentation as well as the required hearings and public participation thus allowing your office and the R.W.Q.C.B. to authorize and to enforce the enactment of this 'project' as describe in the terms of the Cease and Desist Orders.

If after the review of this evidence your office and the R.W.Q.C.B. determine to issue the Cease and Desist Orders as stated or with new conditions I reserve the right to file and request a Stay of Execution of said order and to exercise my right of appeal to the State Water Resources Control Board and if need be find judicial relief in all aspects of this action.

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Exemptions

As stated on pages 2 and 3 item 10 of the Cease and Desist orders in which it is stated:

This enforcement action is being taken for the protection of the environment and as such is exempt from the provisions of the California Environmental Quality Act (Section 15321, Chapter 3, Division 6, Title 14, California Code of Regulations, "CEQA"). In addition, the Septic System is an existing facility and this Order allows no expansion of use beyond that previously existing so this enforcement action is exempt from the provisions of CEQA (Section 15301, Chapter 3, Division 6, Title 14, California Code of Regulations).

Understanding this reference is made to (section 15321) under CEQA:

(a) Actions by regulatory agencies to enforce or revoke a lease, permit, license, certificate, or other entitlement for use issued, adopted, or prescribed by the regulatory agency or enforcement of a law, general rule, standard, or objective, administered or adopted by the regulatory agency. Such actions include, but are not limited to, the following: (2) The adoption of an administrative decision or order enforcing or revoking the lease, permit, license, certificate, or entitlement for use or enforcing the general rule, standard, or objective.

Then the supposition of that claim is that this is an Administrative decision concerning items in sub section (2) as defined in CEQA Article 20 Definitions (section 15369.) Ministerial:
"Ministerial" describes a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision. A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out. Common examples of ministerial permits include automobile registrations, dog licenses, and marriage licenses. A building permit is ministerial if the ordinance requiring the permit limits the public official to determining whether the zoning allows the structure to be built in the requested location, the structure would meet the strength requirements in the Uniform Building Code, and the applicant has paid his fee. (These are only examples as described by CEQA).

What is not clear is whether this a discretionary action and if so it is subject to an E.I.R. or a Negative Impact Declaration of which both require substantial study and review of which has not been under taken in this case. This aspect will be discussed further after the next supposition.

Your office has also stated using only the later half of this code that this action is also exempt from CEQA (section 15301) Existing Facilities: Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or (no expansion of use beyond that existing at the time of the lead agency's determination.)
(And this section goes on to give various examples but states it is not limited to those examples.)

What is clear is that the conditions of the C.D.O's. and specially the pumping regiment that this is a "project" as stated in the Codes of exemptions that your office has claimed and therefore should be considered as such under the Codes of the State of California and Federal Codes as is applicable.

Referring back to exemptions under (Section 15321 of CEQA) the reference is made to (Public Resource Code 21084. (a) The guidelines prepared and adopted pursuant to Section 21083 shall include (a list of classes of projects) which have been determined (not to have a significant effect) on the environment and which shall be exempt from this division. In adopting the guidelines, the Secretary of the Resources Agency shall make a finding that the listed classes of projects referred to in this section (do not have a significant effect on the environment).
Again we see a reference that this exemption is dependant on that this is a "project." But what seems to be as significant is the

criteria that there will be "no (significant effect) on the environment."

Let's look at the term "project" first.

Under CEQA Definitions (section 15378.) Project

(a) "Project" means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following:

(1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof pursuant to Government Code Sections 65100-65700.

(2) An activity undertaken by a person which is supported in whole or in part through public agency contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

(3) An activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

What is applicable is that under (a) There will be a significant effect to the environment and that the R.W.Q.C.B. will be considered the public agency under sub section (1) and because of the Administrative claim of exemption sub section (3) also applies. Sub section (2) would also apply if or when the C.D.O's. are issued, but we will breach that subject later.

Let's look at "significant effect on the environment."
Under CEQA Definitions (section 15382.) Significant Effect on the Environment:
"Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant.

What is clear here is that significant effects to air, water, and ambient noise will apply to this project and to a significant degree the social and economic impacts will also apply though by themselves the social and economic factors would not be considered as far as an E.I.R. is concerned.

Let's consider the Environmental Impact Report and look at the definition of environment as described by CEQA.
Under CEQA (section 15360.) Environment:
"Environment" means the physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historical or aesthetic significance. The area involved shall be the area in which significant effects would occur either directly or

indirectly as a result of the project. The "environment" includes both natural and man-made conditions.

Returning to the subject of the exemption, under CEQA (section 15301) as to the stated supposition of the C.D.O's. only the second part of the section 15301 was quoted and the first most significant part was omitted. Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features...

This omission does not allow for consideration that the continuing operation, repair and maintenance is subject to pumping through the use of an added piece of equipment (specifically a Diesel Truck) so an inspection and operation, repair, and maintenance can take place. By itself septic tank pumping on a normal pumping regiment would not be significant addition of equipment nor have a significant effect on the environment and would not allow for the extended or expanded use of the "facility." However at 6 times per year it would add the significant use of heavy equipment which will in turn add to the degradation of air quality from exhaust and deleterious fumes from septic systems and an increase of ambient noise. The calculation would be 6 x the number of septic tanks divided by the working days of the year. Approximately 100 septic tanks would have to be pumped every day. Diesel engines are a major source of particulate and smog-forming pollution. Diesel exhaust is considered a probable carcinogen.

This brings us back to the exemption under CEQA (section 15321). As stated in the previous paragraph the environmental degradation would be significant and would create a health hazard for infants, children, and seniors as well as the middle adult population. This action would also lower the social and economic conditions of the community which is an added detriment to the community and is considered significant by the previously stated codes. The conclusion per the exemptions claimed by your office in retrospection are not valid nor is the condition that is stated in the C.D.O's. of the pumping of the septic tanks every other month. But this supposition needs to be supported by code so we will explore the exceptions to the exemptions as stated under CEQA.

Exceptions

Under CEQA (section 15301 and section 15321) exemptions from requiring an E.I.R. or a Negative Impact Report are laid out for uses that do not significantly effect the environment and for ministerial action concerning administrative purview. These exemptions are not allowed if the effects of the action significantly cause environmental, health, social, and economic hardships.

Under CEQA there are codes that are exceptions to the exemptions. (section 15300.2.) Exceptions:
(c) Significant Effect. A categorical exemption (shall not) be used for an (activity) where there is a reasonable possibility that the activity (will) have a significant effect on the environment due to unusual circumstances.

The operative words are "shall not" and "will" and under these exceptions "shall not" means exactly that and there is no other interpretation. Under (c) there is a reasonable possibility that adverse effects "will" cause a "significant effect on the environment due to unusual circumstances" (pumping every other month) such as air pollution, deleterious fumes from septic systems and an increase of ambient noise. But I would also point out that there is a reasonable inference that this action could caused harm to septic systems such as septic system failure as well as there "will" be an increase in seawater intrusion and overdraft to the water basin the loss of tens of millions of gallons of water from the Los Osos Water Basin. As previously stated in the exemption section of this paper the definitions of the wording in the exemption as well as the exceptions to the exemption are paramount in determining the validity of the exemptions and the actual conditions within the C.D.O's. such as the pumping requirement. The negative aspects of this enforcement according to code have significantly shown the positive gains are few and are dubious at best. One word that came apparent but may have been overlooked was the word "maintenance" as stated in section 15301 and that word if applied to Septic Maintenance Program brings the intent of this action to the forefront. But because the full extent of this action may have not been carefully thought through a possibility of an environmental and economic disaster may be the finale out come.

In my research into these issues I came across this code under the Public Resource Codes and found it to be significant and applicable in this situation.

Public Resource Code (section 21083.)

(a) The Office of Planning and Research shall prepare and develop proposed guidelines for the implementation of this division by public agencies. **The guidelines shall include objectives and criteria for the orderly evaluation of projects and the preparation of environmental impact reports and negative declarations in a manner consistent with this division.**

(b) The guidelines shall specifically include criteria for public agencies to follow in determining whether or not a proposed project may have a **"significant effect on the environment."** The criteria shall require a finding that a project may have a **"significant effect on the environment"** if one or more of the following conditions exist:

(1) A proposed project has the potential to **degrade the quality of the environment**, curtail the **range of the environment**, or **to achieve short-term, to the disadvantage of long-term, environmental goals.**

(2) The possible effects of a project are individually limited but cumulatively considerable. As used in this paragraph, "cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, **the effects of other current projects, and the effects of probable future projects.**

(3) **The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.**

(c) The guidelines shall include procedures for determining the lead agency pursuant to Section 21165.

(d) The guidelines shall include criteria for public agencies to use in determining when a proposed project is of sufficient statewide, regional, **or area wide environmental significance that a draft environmental impact report, a proposed negative declaration, or a proposed mitigated negative declaration shall be submitted to appropriate state agencies**, through the State Clearinghouse, for review and comment prior to completion of the environmental impact report, negative declaration, or mitigated negative declaration.

The following is gleaned from CEQA and the intent of the Act.

CEQA Chapter 1: Policy§ section 21000. Legislative intent:

The Legislature finds and declares as follows:

(a) The maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern.

(b) It is necessary to provide a high-quality environment that at all times is healthful and pleasing to the senses and intellect of man.

(c) There is a need to understand the relationship between the maintenance of high-quality ecological systems and the general welfare of the people of the state, including their enjoyment of the natural resources of the state.

(d) The capacity of the environment is limited, and it is the intent of the Legislature that the government of the state takes immediate steps to identify any critical thresholds for the health and safety of the people of the state and take all coordinated actions necessary to prevent such thresholds being reached.

(e) Every citizen has a responsibility to contribute to the preservation and enhancement of the environment.

(f) **The interrelationship of policies and practices in the management of natural resources and waste disposal requires**

systematic and concerted efforts by public and private interests to enhance environmental quality and to control environmental pollution.

(g) It is the intent of the Legislature that all agencies of the state government which regulate activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, **shall regulate such activities so that major consideration is given to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian.**

§ 21001. Additional legislative intent

The Legislature further finds and declares that it is the policy of the state to:

(a) Develop and maintain a high-quality environment now and in the future, and take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state.

(b) Take all action necessary to provide the people of this state with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and freedom from excessive noise.

(c) Prevent the elimination of fish or wildlife species due to man's activities, insure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities and examples of the major periods of California history.

(d) Ensure that the long-term protection of the environment, consistent with the provision of a decent home and suitable living

environment for every Californian, shall be the guiding criterion in public decisions.

(e) **Create and maintain conditions under which man and nature can exist in productive harmony to fulfill the social and economic requirements of present and future generations.**

(f) Require governmental agencies at all levels to develop standards and procedures necessary to protect environmental quality.

(g) **Require governmental agencies at all levels to consider qualitative factors as well as economic and technical factors and long-term benefits and costs, in addition to short-term benefits and costs and to consider alternatives to proposed actions affecting the environment.**

§ 21001.1. Review of public agency projects:

The Legislature further finds and declares that it is the policy of the state that projects to be carried out by public agencies be subject to the same level of review and consideration under this division as that of private projects required to be approved by public agencies.

§ 21002. Approval of projects; feasible alternative or mitigation measures The Legislature finds and declares that it is the policy of the state that **public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects, and that the procedures required by this division are intended to assist public agencies in systematically identifying both the significant**

effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects. The Legislature further finds and declares that in the event specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof.

§ 21002.1. Use of environmental impact reports; policy
In order to achieve the objectives set forth in Section 21002, the Legislature hereby finds and declares that the following policy shall apply to the use of environmental impact reports prepared pursuant to this division:
(a) The purpose of an environmental impact report is to identify the significant effects on the environment of a project, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided.

As stated in a previous page the application of the following definition of "Project" in sub section (2) would be applicable.
Under CEQA Definitions (section 15378.) Project
(a) "Project" means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following:
(2) An activity undertaken by a person which is supported in whole or in part through public agency contracts, grants, subsidies, loans, or other forms of assistance from one or more public

agencies. This sub section would only be applicable if the C.D.O's. were issued and that the property owners applied for state funding as written in Water Code § 13301.1. Assistance with order **The regional board shall render to persons against whom a cease and desist order is issued pursuant to Section 13301 all possible assistance in making available current information on successful and economical water quality control programs**, as such information is developed by the state board pursuant to Section 13167, and information and **assistance in applying for federal and state funds necessary to comply with the cease and desist order.**

As I understand it this code provides the Property owner or recipient of a C.D.O. assistance in finding funding so they can achieve compliance to include low interest loans and grants. But the recipient would have to comply with CEQA to get this funding. The alternative would be to let the District assume the C.D.O's and apply for the funding under a Septic Maintenance Program which in this case would let the Property owners avoid the economic hardship of a C.D.O. but would require them to participate in the program as they are the District and are under the hospices of the Districts purview.

In conclusion, the authority of the R.W.Q.C.B. to carry out the enforcement policies of the State concerning Water Quality is not in dispute, but only the way in which the enforcement is carried out. As stated in the previous section of the Public Resource Code and the intent of the policies under CEQA, communication, and co-operation is the only road to compliance. This criteria is laid out in the codes and definitions in the wording of those codes and unless all concern understand the intent of the policies, statutes and the codification of those statutes great harm and delay in correcting the environmental problems of the community will persist and probable will be magnified by coarse and extreme measures that do nothing to solve and resolve the problems we face. There are alternatives and as the L.O.C.S.D. has been determined to be a Designated Party they could assume C.D.O's and the rains for a Septic Maintenance and Management Program funded by the State through one of the financial programs. At this time the District is working towards this endeavor and I believe they have a plan to have every septic tank pumped and inspected in the first phase, identify the problem systems and constitute a repair or replacement program. They are also looking to institute an upper aquifer pumping program to help alleviate the high ground water problems in portions of the community. This process is in the R.F.P. stage. I would enjoin you to consider a different tact in this endeavor to achieve water quality standards and work with the community and its local agencies to achieve this goal.

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